

SENATE BILL NO. 99

INTRODUCED BY D. HARRINGTON

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A 5-YEAR PERIOD OF LIMITATIONS FOR ASSESSMENT OR COLLECTION, OR REFUND OF CORPORATION LICENSE TAX; AMENDING SECTION 15-31-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-31-509, MCA, is amended to read:

"15-31-509. Periods of limitation. (1) Except as otherwise provided in 15-31-544 and this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 3 5 years from the date that the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax may not apply when:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax if the suspension of the limitation set forth in this section lasts:

(i) only as long as the suspension of the federal statute of limitation; or

(ii) until 1 year after the federal changes have become final or an amended federal return is filed as a result of the suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file an amended Montana return, as required by 15-31-506, until 3 5 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 3 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period the taxpayer files a claim for the



1 refund or credit or the department has determined the existence of the overpayment and has approved the refund  
 2 or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within  
 3 which the department may propose an additional assessment, the period within which a claim for refund or credit  
 4 may be filed or a credit or refund allowed in the event a claim is not filed must automatically be extended.

5 (3) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback  
 6 adjustment as provided in 15-31-119, ~~in lieu of the 3-year 5-year period provided for in subsection (1), the period~~  
 7 ~~must be the period that ends with the expiration of the 15th day of the 41st month following the end of the tax year~~  
 8 ~~of the net loss that results in the carryback~~ THE OVERPAYMENT MAY BE REFUNDED OR CREDITED WITHIN THE PERIOD  
 9 THAT EXPIRES ON THE 15TH DAY OF THE 41ST MONTH FOLLOWING THE CLOSE OF THE TAX YEAR OF THE NET OPERATING  
 10 LOSS IF THAT PERIOD EXPIRES LATER THAN 5 YEARS FROM THE DUE DATE OF THE RETURN FOR THE YEAR TO WHICH THE  
 11 NET OPERATING LOSS IS CARRIED BACK.

12 (4) If the year of the net operating loss is open under either state or federal waivers, the year to which  
 13 the loss is carried back will remain open for the purposes of the loss carryback and for 12 months following the  
 14 expiration of the state or federal waiver, even though the claim would otherwise be barred under this section."

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16 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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18 NEW SECTION. Section 3. Retroactive applicability. [This act] applies retroactively, within the  
 19 meaning of 1-2-109, to tax years beginning after December 31, 2002.

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